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RECORDS AND CORRESPONDENCE

14 February 1975

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AGENCY IMPLEMENTATION OF THE AMENDED FREEDOM OF INFORMATION ACT

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1. INTRODUCTION

- a. This notice is for the information of Agency employees involved in processing documents and records in response to requests for material made under the amended Freedom of Information Act (FOIA). The notice describes the act, outlines its important provisions, and covers the procedures established within the Agency for handling requests for records or other material under the act. A handbook will be developed and distributed in the near future to provide more complete guidance.
- b. Employees should become familiar with the FOIA requirements and the resulting Agency procedures. Failure to comply with these requirements can result in legal action against the Agency. Because of time limits and other FOIA requirements, the processing of requests for records must be carefully controlled and coordinated.
- c. The procedures provided in this notice have been developed to ensure timely responses to a probably heavy volume of requests. The processing of requests under the act, however, is complicated, and no printed guide can provide all the answers to the questions that may arise. Therefore, consultation and coordination is encouraged between the concerned components and legal and administrative experts.

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2. GENERAL REQUIREMENTS

- a. The Freedom of Information Act applies to all Federal agencies, including CIA. The 1974 amendments to the act require the Agency to take a number of measures to ensure compliance. The Agency must also attempt to minimize any adverse effect the amendments might have on its basic intelligence functions. Because any employee may be called upon to assist in implementing the Agency's responsibilities under the act, it is important that all employees be familiar with the act's requirements.
- b. Any person (of any citizenship or none, from any place in the world, and for whatever purpose or reason) may request a copy of any reasonably described document or record of the Agency. The Agency must furnish it unless it falls within one or more of the nine specified categories of exempted information. A listing and discussion of the nine exemption categories are included in paragraph 3.
- c. Upon receipt of a request for records or documents, the Agency must locate the requested materials, review them in light of the FOIA exemptions, and determine the documents, or reasonably segregable portions of documents, to be released and those to be refused. It must do this within 10 workdays of receipt of the request. If the request is refused, the requestor may appeal the decision to the CIA Information Review Committee which must make its decision within 20 workdays. (In certain specified circumstances one, but not both, of these time limits may be extended up to 10 additional workdays.) If the committee withholds the documents or if the Agency fails to meet either of the deadlines, the requestor may sue the Agency immediately. Theoretically, the Agency could be a defendant in a lawsuit 11 workdays after a request is received, even if the request is for numerous documents and involves an extensive search, time-consuming review, and high level decisions. If the requestor sues, the courts can substitute their own decisions for those of the Agency by determining that a document denied a requestor was either not properly classified or that it does not fall within any of the exemptions. The courts then can order its release.

3. EXEMPTIONS

- a. The FOIA specifically exempts from obligatory disclosure nine categories of information. Exemptions 1 and 3 are of special importance to the Agency because they protect classified information and information pertaining to intelligence sources and methods. In many cases such information would be protected under both exemptions. It should be noted that properly classified information and information involving intelligence sources and methods must be withheld.

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The remaining seven exemptions are permissive in that documents containing information falling within any of these categories may be withheld, but are not required to be withheld. The Attorney General has advised that, for the purpose and spirit of the act, information and documents should be withheld under the permissive exemptions only when necessary or desirable in the national interest.

- b. The disclosure requirements of the Freedom of Information Act do not apply to matters that are:

(1) Exemption (b)(1)

(a) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (b) are in fact properly classified pursuant to such Executive order.

In order to apply exemption (b)(1), it is necessary to refer to Section 1 and Section 5(B) of Executive Order 11652 (attachment). These sections contain the nationally recognized classification criteria, and no other criteria may be invoked. The reviewer must determine if the document involves a matter that is "specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy" and currently is "in fact properly classified pursuant to such Executive order."

(2) Exemption (b)(2)

related solely to the internal personnel rules and practices of an agency.

Exemption (b)(2) relates to matters that are solely for the guidance of the personnel of an agency, and includes internal rules and practices that cannot be disclosed to the public without substantial prejudice to the effective performance of a significant agency function. The exemption, however, does not cover all matters of internal management such as employee relations and working conditions and routine administrative procedures.

(3) Exemption (b)(3)

specifically exempted from disclosure by statute.

With regard to exemption (b)(3), there are two statutes that should be considered by Agency employees: (a) The proviso to

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subsection 102(d)(3) of the National Security Act of 1947, as amended, which makes the Director responsible "for protecting intelligence sources and methods from unauthorized disclosure;" and (b) Section 6 of the CIA Act of 1949, as amended, which exempts from the requirement for disclosure "the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency." There are other significant statutes related to exemption (b)(3), such as the statutes governing copyrights, cryptographic communications information, and Atomic Energy information.

(4) Exemption (b)(4)

trade secrets and commercial or financial information obtained from a person and privileged or confidential.

Exemption (b)(4) exempts material not customarily made public by the persons from whom the Government obtained it. The exemption would include business sales statistics, inventories, customer lists, scientific or manufacturing processes or developments, and negotiation positions or requirements in labor-management mediations.

(5) Exemption (b)(5)

inter-agency or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency.

Exemption (b)(5) exempts internal communications such as drafts, memorandums between officials or agencies, and opinions and interpretations prepared by an agency's staff personnel or consultants. To the extent such material sets forth the basis for agency action, and can be separated from the deliberative process, the material may not be exempt. The policy is to exempt records of deliberations so that free exchange of ideas will not be inhibited.

(6) Exemption (b)(6)

personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

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Exemption (b)(6) is intended to exclude from the disclosure requirements personnel and medical files, and all private or personal information contained in other files, which if disclosed to the public would clearly be an unwarranted invasion of the privacy of any person, including members of the family of the person to whom the information pertains. The term "similar files" can be reasonably interpreted to include Agency security and polygraph files on individuals. Exemption (b)(6) does not authorize an agency to withhold from a requestor information pertaining to himself.

(7) Exemption (b)(7)

investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (a) interfere with enforcement proceedings, (b) deprive a person of a right to a fair trial or an impartial adjudication, (c) constitute an unwarranted invasion of personal privacy, (d) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (e) disclose investigative techniques and procedures, or (f) endanger the life or physical safety of law enforcement personnel.

Exemption (b)(7) was extensively revised by the 1974 amendments and will be the subject of additional guidance at an early date.

(8) Exemption (b)(8)

contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.

This exemption would seldom be used by the Agency.

(9) Exemption (b)(9)

geological and geophysical information and data, including maps, concerning wells.

Exemption (b)(9) exempts from disclosure such information as the seismic reports and other exploratory findings of oil companies that would give speculators an unfair advantage over the companies that may have spent millions of dollars in exploration.

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4. THE AGENCY RESPONSE

a. After the requested documents have been reviewed against the nine exemptions under the act, the reviewing personnel will forward their recommendations to an Agency official authorized to deny or release documents. Only selected Agency officials within each Directorate and Independent Office have been authorized to make such decisions on behalf of the Agency. Reviewing personnel should accompany their advice and recommendations to a decisionmaking official with supporting information and explanations. This is necessary so that, if a decision is challenged, it may be shown that the decision was based on all relevant factors and was neither arbitrary nor capricious. The decisionmaking official must assert, and fully support, all the exemptions he considers applicable. Otherwise, the Agency may be prevented from asserting its right to withhold a document if it bases this right on exemptions that differ from those cited in denying the original request. The assistance of the Office of General Counsel is available in these matters. The decisionmaking official will convey his decision, and reason therefor, to the FOI Coordinator who will notify the requestor of the Agency's decision.

b. All steps in the FOIA procedures must be accomplished in time to permit the FOI Coordinator to forward the Agency decision to the requestor within 10 workdays. It is possible that the time limit may be extended by an additional 10 workdays, but only if a request involves records at a remote location, a voluminous amount of records, or the need for consultation with other Agency components or another agency. In all other cases the Agency must meet the 10 workday time limit, or be subject to a lawsuit.

5. THE CIA FREEDOM OF INFORMATION COORDINATOR

- a. The CIA Freedom of Information Coordinator is responsible for receiving requests for information submitted by the public, assigning responsibility within the Agency, assisting in processing the requests, and ensuring timely responses that conform to the requirements of the FOIA and E.O. 11652.
- b. The CIA Freedom of Information Coordinator is assisted by the Information Review Staff (IRS) and serves as its chief. The IRS also assists Agency components in determining the sensitivity of information, reviewing precedents, segregating portions of documents where applicable, and declassifying records and documents. The IRS will serve as the normal channel for responses to public requests and in most cases will either prepare the responses or ask appropriate components to draft the responses. The IRS will maintain centralized

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records and will prepare reports for the Congress and the Executive Branch on the Agency implementation of the FOIA and the E.O. Additionally, the IRS will support the CIA appeal mechanism and the Information Review Committee, and will function as the committee's Secretariat. The IRS may be contacted on extension 5615.

6. FOIA PROCESSING PROCEDURES


a. WHAT IS AN FOIA REQUEST?

- (1) Any request from the public for records, documents (classified or unclassified), other materials such as photographs, magnetic tapes, or files, or information that the Agency may have published, should be considered for handling under the FOIA. Many requests will reference the FOIA, but this is not a requirement for processing under the FOIA. Any request that references E.O. 11652 should be placed in FOIA channels.
- (2) Correspondence that does not properly belong in FOIA channels should be kept out. Routine requests for Agency employment information, credit checks, and similar requests should receive prompt attention in accordance with the Agency's responsibility to the public. In most cases these requests would not qualify under the FOIA. In addition, various Agency components have long-established, routine contacts with members of the public and public institutions that should not be included under the FOIA. For example, the Assistant to the Director routinely responds to telephone requests from newspaper reporters, and various research offices provide materials to the academic community. It is necessary, however, that the Agency be consistent in releasing materials and also maintain a record of documents and publications released. Components that make such contacts and releases should send copies of pertinent correspondence to the IRS. Requests to these components that clearly fall under the FOIA, however, will be treated as such and promptly forwarded to the IRS.
- (3) Employees should consult their component FOI Officers when in doubt as to whether a request should receive FOIA handling.

b. RECEIPT OF REQUESTS

- (1) Agency regulations concerning the FOIA, published in the Federal Register, specify that requests must be addressed to the Freedom of Information Coordinator, Central Intelligence Agency. Many requestors will not be aware of this regulation

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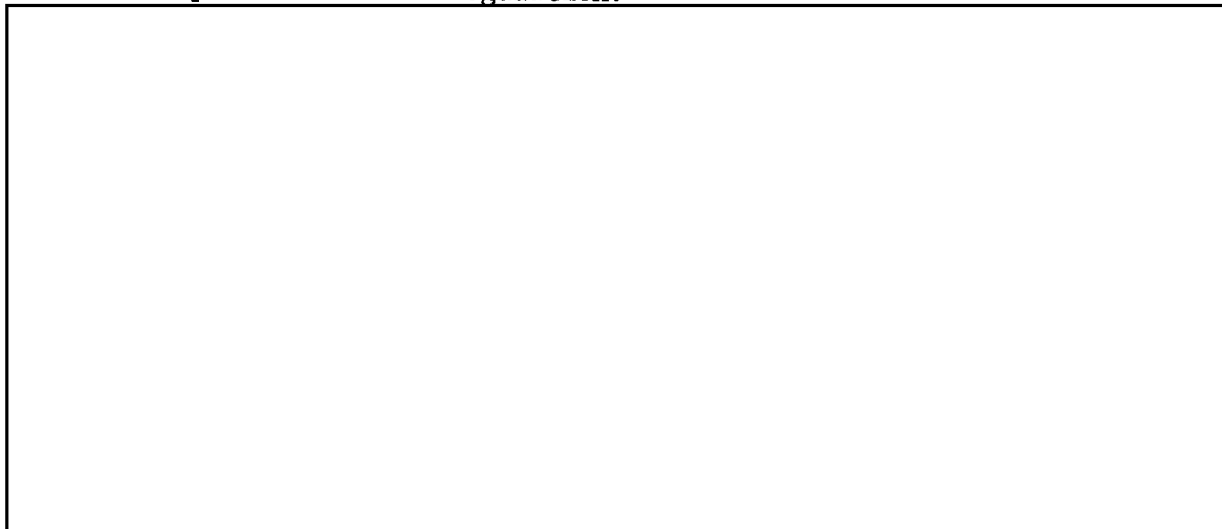
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and will use various addresses such as Central Intelligence Agency; Director, CIA; Assistant to the Director, CIA; Central Reference Service; etc. Any component receiving a misaddressed FOIA request should handcarry it to the IRS. The 10 working days allowed for responding to an FOIA request will begin when the IRS receives it.

- (2) All FOIA requests must be transmitted in writing. If a component identified as CIA receives a telephone or "in person" request for information that has FOIA connotations, the requestor should be referred to the IRS (351-5615). The IRS will ask the requestor to put his request in writing and address it as specified in the regulation.

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c.



d. PROCESSING

- (1) The IRS will log in requests, acknowledge receipt to the requestor, and determine the appropriate processing procedure. A request may fall into one of the following categories:
- (a) The request is too vague to process further. The IRS will ask the requestor for a better definition of his request.
 - (b) The request is misdirected to the Agency. The IRS will inform the requestor of the correct addressee.
 - (c) The request is not an FOIA request. The IRS will transfer action responsibility to the appropriate component.

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- (d) The request is an appropriate FOIA request. The IRS will assign further processing.
- (2) For requests falling under category (d) above, the IRS will establish a case file and assign further processing as follows:
 - (a) Requests for specific documents or files will be assigned to the component that originated the data, or its successor component.
 - (b) Generalized requests for information will be referred to the component having functional responsibility for such information. Requests may require referral to the Central Reference Service for searching of its indexes to identify relevant material, and then referral of retrieved documents to originating components for declassification review.
- (3) Requests made to the Operations Directorate will be forwarded to the FOI Officer, Services Staff, who will be responsible for assigning the request to an Operations Directorate component. Requests made to other Directorates and Independent Offices will be forwarded in coordination with the Directorate or Independent Office FOI Officer to the appropriate component (normally an office or division) for action. The IRS will work closely with component FOI Officers in assigning responsibility for processing requests. Directorate FOI Officers and the AO/DCI will be informed of all requests levied on their components so they can monitor volume, deadlines, and action taken. The IRS will assign a deadline for processing each request and provide components the name of an IRS contact.
- (4) Review of documents at the component level will be conducted by an individual within the component having appropriate substantive knowledge; e.g., desk officer in the Operations Directorate, substantive analyst, branch or division chiefs. Reviewing officials should become familiar with the exemptions under the FOIA before undertaking a review. A document can be withheld simply because it is determined to be properly classified in accordance with E.O. 11652. Reviewing officials, however, should cite all appropriate exemptions. If no exemptions apply, the law requires that the requested document be released. Decisions to deny or release documents will be made at specifically designated higher levels as determined by each Directorate and Independent Office. The decisionmaking official should complete and sign Form 3724, Classification Review Worksheet.

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If all or part of the material requested is denied, the name and title of the official denying the request must be included in the Agency reply to the requestor. Components should attempt to release segregable portions of a document when the entire document cannot be declassified. If segregation results in an incoherent text, the segregated documents or portions of documents should not be provided and the requestor so informed. If segregable portions can be released, those portions that must be withheld should be enclosed in brackets and all pertinent exemptions cited in the margin; e.g., "E.O. 11652, paragraph 5(B)(1)."

- (5) Each component must keep accurate records of the time required to search for and review documents in connection with each FOIA request. These records should be maintained on Form 3533, FOIA Request - Management Information, and sent to the IRS with the component response. The form should be completed even if relevant documents are not found or released, so that appropriate charges can be made to the requestors, reports prepared for the Congress, and data developed to document the impact of FOIA on the Agency.
- (6) The intent of FOIA is to provide the public access, where appropriate, to existing documents that can be reasonably identified. It is not necessary to create documents or reports or to compile statistics to satisfy an FOIA request.
- (7) The Office of General Counsel (OGC) will provide timely legal advice regarding the FOIA provisions to the IRS and other components as required.
- (8) If a reviewing component determines that a document also should be reviewed by another office, Directorate, or agency before it can be released, it must handcarry the request to the IRS which will handle its transmittal.
- (9) The IRS will coordinate with Directorate FOI Officers regarding deadline problems. These officers are responsible for ensuring that deadlines are met or for arranging extensions with the IRS when required.
- (10) A component that has completed processing a request will handcarry the request and completed documentation to the IRS.

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e. RESPONSES

- (1) The IRS, in coordination with OGC, will review component actions and recommendations on requests to ensure they are in accordance with established precedents and that any denials are justified under the exemptions claimed.
- (2) The IRS normally will prepare final responses to requestors in coordination with OGC. If the request is denied, the IRS will inform the requestor of his right to appeal. If the request is approved and unclassified, declassified, or segregated documents are to be provided, the IRS will attempt to forward the documents with the response. If deletion or reproduction processing cannot be completed within the 10 workday limitation, however, the documents will be forwarded separately. If documents are provided to the requestor, but other known relevant Agency materials are denied, the requestor will be informed and advised of his right to appeal. The requestor also will be informed of his right to appeal deletions of a portion of a document; i.e., he has a right to appeal when only segregable portions are provided.

7. CONCLUSION

- a. Agency responses to FOIA requests must not be dilatory, arbitrary, or capricious. The Agency must
 - (1) disclose its decisions to the requestor within 10 workdays; and
 - (2) process initial appeals within 20 workdays.
- b. Compliance with the amended law will require
 - (1) priority handling of FOIA requests, including the handcarrying of materials between components;
 - (2) expeditious review of judgments at informed, responsible levels;
 - (3) close cooperation between the IRS, OGC, FOI Officers, and involved components.

FOR THE DIRECTOR OF CENTRAL INTELLIGENCE:

JOHN F. BLAKE
Deputy Director
for
Administration

Attachment

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EXECUTIVE ORDER 11652 - CLASSIFICATION AND DECLASSIFICATION OF NATIONAL SECURITY INFORMATION AND MATERIAL [AS AMENDED]

Section 1. Security Classification Categories. Official information or material which requires protection against unauthorized disclosure in the interest of the national defense or foreign relations of the United States (hereinafter collectively termed "national security") shall be classified in one of three categories, namely "Top Secret," "Secret," or "Confidential," depending upon the degree of its significance to national security. No other categories shall be used to identify official information or material as requiring protection in the interest of national security, except as otherwise expressly provided by statute. These classification categories are defined as follows:

(A) "Top Secret." "Top Secret" refers to that national security information or material which requires the highest degree of protection. The test for assigning "Top Secret" classification shall be whether its unauthorized disclosure could reasonably be expected to cause exceptionally grave damage to the national security. Examples of "exceptionally grave damage" include armed hostilities against the United States or its allies; disruption of foreign relations vitally affecting the national security; the compromise of vital national defense plans or complex cryptologic and communications intelligence systems; the revelation of sensitive intelligence operations; and the disclosure of scientific or technological developments vital to national security. This classification shall be used with the utmost restraint.

(B) "Secret." "Secret" refers to that national security information or material which requires a substantial degree of protection. The test for assigning "Secret" classification shall be whether its unauthorized disclosure could reasonably be expected to cause serious damage to the national security. Examples of "serious damage" include disruption of foreign relations significantly affecting the national security; significant impairment of a program or policy directly related to the national security; revelation of significant military plans or intelligence operations; and compromise of significant scientific or technological developments relating to national security. The classification "Secret" shall be sparingly used.

(C) "Confidential." "Confidential" refers to that national security information or material which requires protection. The test for assigning "Confidential" classification shall be whether its unauthorized disclosure could reasonably be expected to cause damage to the national security.

Attachment

Section 5(B) Exemptions from General Declassification Schedule. Certain classified information or material may warrant some degree of protection for a period exceeding that provided in the General Declassification Schedule. An official authorized to originally classify information or material "Top Secret" may exempt from the General Declassification Schedule any level of classified information or material originated by him or under his supervision if it falls within one of the categories described below. In each case such official shall specify in writing on the material the exemption category being claimed and, unless impossible, a date or event for automatic declassification. The use of the exemption authority shall be kept to the absolute minimum consistent with national security requirements and shall be restricted to the following categories:

- (1) Classified information or material furnished by foreign governments or international organizations and held by the United States on the understanding that it be kept in confidence.
- (2) Classified information or material specifically covered by statute, or pertaining to cryptography, or disclosing intelligence sources or methods.
- (3) Classified information or material disclosing a system, plan, installation, project or specific foreign relations matter the continuing protection of which is essential to the national security.
- (4) Classified information or material the disclosure of which would place a person in immediate jeopardy.